be granted almost as a matter of course." *Hardy* v. *Peters,* 30 Hun 79. It is discretionary with the court to grant the order according to the circumstances of each case. *Wagner* v. *Haight and Truse Co.,* 89 N. Y. Supp. 323. And the fact that defendant states he will be present at the trial is not ground for refusing plaintiff's application. *Comm. Pub. Co.* v. *Beckwith,* 68 N. Y. Supp. 600. But where the information can be secured without the examination of the defendant it is improper to grant the same. *Tonenbaum* v. *Lippman,* 85 N. Y. Supp. 122. Other cases in accord with the principal one are *Plainwell* v. *Brown,* 4 Hen. & M. (Va.) 482; *Van Walters* v. *Board of Children's Guardians of M. County,* 132 Ind. 567. In Michigan as in other states there are statutes which affect the question. So in *Riopelle* v. *Doellner,* 26 Mich. 102, it was held that since the statutes have allowed parties to become general witnesses there is no further office for a bill of discovery. This decision was affirmed in *Shelden* v. *Walbridge,* 44 Mich. 251, but the proceedings under these statutes are limited by the rules applicable to a discovery in equity. *Mulhern* v. *Kent Circuit Judge,* 111 Mich. 528.

EASEMENTS.—ABANDONMENT.—Where a deed conveyed an easement in certain land for railroad purposes and after a short use the rails, ties, bridges, etc., were removed and for a period of ten years there was an actual nonuse of the easement, *held* this nonuser and above evidence showing intention of abandonment amounts in law to an actual and permanent abandonment which is not refuted by evidence showing that the railroad at all times considered their right as continuing, considering its non-use only temporary, and further evidence that the owners of the fee at all times sought to escape taxation as to the strip of land in question. *Norton* v. *Duluth Transfer & Ry. Co.,* (Minn. 1915) 151 N. W. 907.

Though logically unsound it is apparently recognized by many decisions that an easement may be extinguished by abandonment. *Tuttle* v. *Sawadzki,* 41 Ut. 501, 126 Pac. 959; *Day* v. *Walden,* 46 Mich. 575; *Jones* v. *Bochore,* 103 Mich. 98; *Moore* v. *Rawson,* 3 B. & C. 332, (which, however, involved an estoppel, as do many of the cases usually cited as sustaining the proposition.) The decision in the principal case appears to be in accord with previous decisions on the question involved, although on somewhat similar facts the courts have questioned whether there was an abandonment. It is agreed that abandonment by a railroad company of a part of its right of way will not be inferred from mere non-user. *N. Y. C. & H. R. R. Co.* v. *City of Chelsea,* 213 Mass. 40; *Home Real Estate Co.* v. *Los Angeles Pac. Co.,* 163 Cal. 760. To constitute an abandonment an intention to abandon the right of way must co-exist with the non-user. *Stannard* v. *Aurora E. & C. Ry. Co.,* 220 Ill. 469; and such intention may appear by acts as well as by declarations of the holder of the easement. *Jamaica Pond Aqueduct Co.* v. *Chandler,* 121 Mass. 3. A case closely in point on the facts with the principal case is that of *Jones* v. *Van Bochore,* 103 Mich. 98, holding that evidence of removal of rails, ties, fences and bridges is sufficient to show permanent abandonment of the easement of right of way. But see *Galveston & W. Ry. Co.* v. *City of Galveston,* (Tex. Civ. App.) 155 S. W. 273, where it was held that even

though the non-user extended for a period of twenty-one years, during which time a parallel location was used by the railroad, this was not sufficient to show abandonment.

EVIDENCE.—PHYSICAL EXAMINATION OF PLAINTIFF IN PERSONAL INJURY CASES.—The plaintiff sued for personal injuries received while in the employ of the defendant. At the trial he voluntarily exhibited his injured leg to the jury, whereupon the defendant requested that its physician be allowed to examine the injured member. This the court refused to do. *Held,* not to be error, that the mere exhibit of the plaintiff's person to the jury did not give the defendant the right to compel the plaintiff to submit to an examination of his leg. *Wheeler* v. *Chicago & W. I. R. Co.* (Ill. 1915) 108 N. E. 330.

Had the plaintiff not exhibited his injured leg to the jury the refusal of the court to compel him to submit to a physical examination would have presented a question upon which the decisions are in hopeless conflict. The weight of authority allows such an examination on the ground that substantial justice requires it, and its refusal encourages perjury and assists in fraudulent and unjust recoveries. *Wanek* v. *Winona,* 78 Minn, 98; *Graves* v. *Battle Creek,* 95 Mich. 266; *Fullerton* v. *Fordyce,* 121 Mo. 1; *Savannah Ry. Co.* v. *Wainwright,* 99 Ga. 255; *Alabama Ry. Co.* v. *Hill,* 90 Ala. 71; *White* v. *Milwaukee Ry Co.,* 61 Wis. 536; *Lane* v. *Spokane Falls Ry. Co.,* 21 Wash. 119. The following refuse to compel an examination on the ground of the inviolability and sacredness of one's person, and his right to possess and control the same "free from all restraint or interference of others." *Union Pacific Ry. Co.* v. *Botsford,* 141 U. S. 250; *Stack* v. *N. Y., N. H. & H. R. Ry. Co.,* 177 Mass. 155; *Parker* v. *Enslow,* 102 Ill. 272; *Peoria Ry. Co.* v. *Rice,* 144 Ill. 227; *McQuigan* v. *Delaware Ry Co.,* 129 N. Y. 50; *International & Great Northern Ry. Co.* v. *Butcher,* (Tex. 1904) 81 S. W. 819; *Galveston Ry. Co.* v. *Sherwood,* (Tex. 1902) 67 S. W. 776. For a full discussion and review of cases on this point see 1 MICH. LAW REV. 193, 277. But where, as in the principal case, the plaintiff voluntarily exhibits his person to the jury it would seem that he thereby waives his privilege to object to a physical examination, and evidence thus put into the case should, like other exhibits in evidence, be open to attack and examination by the opponent. It has been so held where the right to compel a physical examination exists. *Haynes* v. *Trenton,* 123 Mo. 326; *Louisville Ry. Co.* v. *Simpson,* 111 Ky. 754. Also where the court is powerless in the first instance to compel the physical examination. *Winner* v. *Lathrop,* 22 N. Y. Supp. 516; *Houston & Texas Ry Co.* v. *Anglin,* (Tex. 1905) 89 S. W. 966; *Chicago, R. I. & T. Ry. Co.* v. *Langston,* 19 Tex. Civ. App. 568. The Illinois court in the principal case, without citing any authority for its position, refuses to take this step, but takes the view that since the plaintiff was willing to be examined by a physician who had diagnosed and treated him for a fracture of the kneecap for some time after the injury, the refusal of the trial court to grant the defendant's request was not erroneous.

EVIDENCE.—EXPERT TESTIMONY BASED ON LAW OF MATHEMATICAL PROBABILITIES.—Defendant was tried for forging an affidavit by inserting therein